

APPEAL NO. 022026
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 22, 2002. The hearing officer determined that the deceased employee's impairment rating (IR) is 80%, as assessed by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, Dr. A. The appellant (self-insured) appealed, arguing that the deceased employee did not sustain a compensable injury or have disability, and that the hearing officer's IR determination is against the great weight and preponderance of the evidence. In the alternative, the self-insured requests that the case be remanded to the hearing officer "for further consideration and clarification of the assessment of [Dr. A]." The file does not contain a response from the respondent (claimant beneficiary).

DECISION

Affirmed.

The parties stipulated that the deceased employee reached maximum medical improvement (MMI) on November 30, 1995; that in a report dated November 19, 1995, Dr. R, the Commission-selected independent medical examination doctor, certified that the deceased employee reached MMI with a 55% IR; that in a report dated February 16, 1998, Dr. A certified that the deceased employee reached MMI with an 80% IR; and that in a report dated June 6, 1999, Dr. S, the self-insured's peer review doctor, certified that the deceased employee reached MMI with a 30% IR. The deceased employee died on _____.

The hearing officer did not err in determining that the deceased employee's IR is 80%. Section 408.125(e) provides that the report of the designated doctor chosen by the Commission is given presumptive weight and the Commission shall base its determination on that report unless the great weight of the other medical evidence is to the contrary. The self-insured asserts that Dr. A's certification is incorrect because she failed to respond to a letter of clarification, she applied an invalid MMI date, and she misapplied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The hearing officer was persuaded by Dr. A's report, in which she specifically cites "page 101, Table 1" of the AMA Guides and explains how she assessed an 80% IR. The evidence sufficiently supports the hearing officer's determination that the certification of the designated doctor is not contrary to the great weight of the other medical evidence.

Additionally, the self-insured requests the adoption of the peer review doctor's 30% IR, although a physical examination of the claimant was not conducted by that doctor. The self-insured contends that the untimely death of the deceased employee is

an “extenuating circumstance which should have rendered the assessment of [Dr. S] acceptable” since it is “very common and acceptable by the Commission to allow a physician to render an impairment assessment based upon the review of medical records generated by another physician.” We disagree. We have held on many occasions that an evaluation or certification under the AMA Guides and the 1989 Act must include a physical examination and evaluation by the doctor. Texas Workers' Compensation Commission Appeal No. 982943, decided January 27, 1999; Texas Workers' Compensation Commission Appeal No. 961097, decided July 17, 1996; and, more specifically, Texas Workers' Compensation Commission Advisory No. 93-04, dated March 9, 1993.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge